

**IN THE ARMED FORCES TRIBUNAL
REGIONAL BENCH, GUWAHATI**

OA - 17 of 2018

PRESENT

HON`BLE DR. (MRS) JUSTICE INDIRA SHAH, MEMBER (J)
HON`BLE LT GEN GAUTAM MOORTHY, MEMBER (A)

No. 13670278W Ex-NK (TS)
Zamtung Nung
S/o Nung Chin
Vill-Zehang Lamka
PO-Churachandpur
Dist-Churachandpur, Manipur

..... Applicant

By legal practitioners for
Applicant.

Mrs. Rita Devi
Mr. A.R.Tahbildar

-VERSUS-

1. **The Union of India through**
the Secretary, Ministry of Defence,
New Delhi-1.
2. **Records Brigade of Guards**
PIN-900746
C/O 56 APO
3. **Additional Directorate General**
Personnel Services, PS -4(d)
Adjutant General's Branch
Integrated HQ of MOD (Army),
PO-New Delhi
4. **The Principal Controller of Defence Accounts,**
(Pension), Allahabad
PIN-211014, Uttar Pradesh.

..... Respondents

By Legal Practitioner for the
Respondents

Mr. C. Baruah, CGSC.

Date of Hearing : 12.06.2018

Date of Judgment & order: 12.06.2018

JUDGMENT & ORDER

(Per Dr. (Mrs) I. Shah, Member (J))

1. This is the second round of litigation. Earlier the applicant filed OA-76 of 2016 which was disposed of vide order dated 22.03.2017 directing the respondents to treat the present OA as the first appeal and to decide the same by the first appellate authority within a period of 03 months from the date of receipt of a copy of this order. The same shall be done by speaking order having regards to various judicial pronouncements. The order that may be passed shall be communicated to the applicant so that if he has any further grievance, he may approach the appropriate forum. However, despite passage of more than one year, no such speaking order has been passed. Only a letter dated 19.08.1917 was issued directing the applicant to appear before the Review Medical Board at Army Hospital (R&R) Delhi Cantt on receipt of a copy of call letter from them. However, the applicant states that no such call up letter or any firm information has been received by him despite him having spoken to the Board Section of Army Hospital, Delhi Cantt on numerous occasions. Hence, this fresh OA has been filed.

2. The applicant was enrolled in Army on 25.10.1972 as Sepoy and posted to 5 GUARDS Battalion. He was released after completion of his term of engagement in Low Medical Category CEE (P) by the Release Medical Board held on 12.05.1987 with degree of disability at 20% which was noted as aggravated due to military service. The applicant was discharged from service on 01.02.1988 and granted disability pension with effect from 01.02.1988 to 11.12.1989, but thereafter it was stopped. The Re-survey Medical Board held at 151 Base Hospital on 23.05.1989 assessed applicant's disability at 20% permanent for life. The PCDA (P), Allahabad vide PPO No. D/RA/6593/1989 dated 07.09.1989 informed the Records of the Brigade of Guards that the *"The disability of the pensioner has been accepted by*

this.....(not legible) at NIL% for life and IP 20%." The letter also states in the Note, *"the individual if he is not satisfied may please be advised to appeal against the decision as this 6 months"*. The applicant has filed this application claiming continuation disability element of pension and rounding off benefit.

3. We have heard Mr. A.R. Tahbildar, learned counsel appearing for the applicant and Mr. C. Baruah, learned CGSC assisted by Capt Akash Vashishta, OIC Legal Cell, AFT, Guwahati appearing for the respondents.

4. It has been submitted by the learned counsel for the applicant that during the service period, the applicant suffered from the disability "LUMBAR SPONDYLOSIS 721 V-67" and *"sustained injury due to fall on back while playing games in unit"* and that it first started on 16.03.1979 in Meerut. He was placed in the Low Medical Category CEE (P) for two years by the Release Medical Board held on 12.05.1987 with the degree of disability 20% which was conceded as aggravated by military service as per the opinion of the Board. The applicant was discharged from service w.e.f. 01.02.1988 after completion of 15 years of qualifying service. The applicant was granted disability pension from 01.02.88 to 11.12.89. A Re-survey Medical Board was held on 23.05.1989 wherein it was found that applicant's disability persists and degree of his disability was assessed at 20% permanent w.e.f. 12 May 1989.

5. There is no dispute that the applicant was discharged from service with the degree of disability 20% for two years. It is evident that the Re-survey Medical Board assessed the percentage of disability as '20% permanent' which implies that it was for life. The applicant was initially granted disability element of pension for two years and the payment of disability element of pension has been discontinued as the PCDA (P) did not agree with the opinion of Re-survey Medical Board that the disablement of applicant was @ 20%.

6. It is settled law that PCDA (P) has no authority to disagree with the opinion of the Re-survey Medical Board, that too without any physical examination of applicant.

7. In an order dated 14.03.2016, in OA- 52 of 2015 (**Debashish Ghosh vs. UOI**), the Kolkata Bench of AFT while allowing the applicants ruled :-

“19. We find no reason for PCDA (P) to reverse the opinion of the COI and the Release (Invalidating) Medical Board for the reasons mentioned in paragraph 10 (supra). In this connection, the following decisions highlighting the over-reach of the PCDA (P) Allahabad are appended below –

“Ram Kumar Singh vs. Union of India, Rajasthan High Court Jaipur, SB Civil WP

No. 4904 of 1997 Role of CCDA(P)

Held, there was no basis or reason or rationality with the CCDA(P) to disagree with the Reports of the Medical Board and Re-survey Medical Board. There was no justification for the CCDA(P) to reduce the petitioner’s disability from 30% to 15-19% from 90% to 50%. The Medical Board consists of specialists in the subject in the field of medical science and their opinion could not have over-ruled by those who had no occasion to make real assessment of the disability of the pensioner.

“Mukhtiar Singh, Ex Hav v. Union of India, Delhi CWP No. 2811 of 1993.

Re-assessment

“Held, it was not open to the CDA(P) Allahabad to ignore the Re-Survey Medical Board opinion without any further reassessment by the Re-Survey Medical Board. The CDA(P) Allahabad was directed to pass appropriate orders for payment of disability pension at 20%.

(Petition allowed, order dated 6 Feb 1995)”

In another case, the AFT, Kolkata Bench in OA No. 105 of 2013 in the case of **Ex-Rect KhageswarNayak vs. Union of India and 5 others** on 23.7.2014 has ruled as under :

“From the above facts it appears that that PCD(P) or CDA has acted as a superior authority to the Medical Board and overruled the Medical Board’s opinion at its sweet will without even bothering to disclose any reason for such decision. This is absolutely illegal and unjustified.”

Further, in the same case on 21.8.2015 the Sr. Accounts Officer from PCDA (P), Allahabad Shri Kamalesh Kumar Shukla appeared and stated that the order of 12.7.1951 under which the finding of Medical

Board and question of entitlement to disability pension and/or percentage of disability were not considered final and were subject to alteration by CDA(P) Allahabad acting on the advice of his Medical Advisor (Pension), has been withdrawn from 2005. The extracts of the order dated 21.8.2015 are quoted as under:

"It appears that the disability element of pension sanctioned to the applicant by the Medical Board has been stopped by CCDA in terms of an order dated 12.7.1951. We have been confirmed by Shri Kamalesh Kumar Shukla, Sr. Accounts Officer from PCDA(P), Allahabad who appears today that the order of 1951 has now been withdrawn from 2005. From the affidavit filed today, it appears that the opinion of Medical Board has been reviewed by the Medical Advisor, pension to the Record Office. We fail to understand as to how the opinion of Medical Board consisting of 3 to 5 Medical Officers can be reviewed by one Medical Advisor. The decision taken by the Medical Board seems to be final and CCDA has no right to stop the pension. Accordingly as an interim measure, we direct the respondent authorities including the PCDA(P), Allahabad to restart the disability element of pension with effect from August, 2015 and the entire arrear of such pension will be deposited with this Tribunal within one month."

20. Yet, another letter issued by ADG Personnel Services, Adjutant General's Branch, Integrated HQ of MoD (Army) letter No. B/39022/Misc/AG/PS-4(L)/BC dated 25.4.2011 specifically has ordered all Commands of the Army to withdraw from contesting in Court cases where finding of IMB/RMB has been altered by MAP in PCDA (P). Extracts of the letter are as under:

"1. It may be recalled that the institution of MAP in PCDA(P) has now been abolished since 2004. Till such time it was invoked, all med opinions of the IMB/RMB that were recd in PCDA(P) for claims were adjudicated by the MAP (Medical Advisor Pensions) who were considered the final authority to decide on final admissibility of disability pension.

2. These alterations in the findings of IMB/RMB by MAP(PCDA(P)) without having physically examined the indl, do not stand to the scrutiny of law and in numerous judgements. Hon^{ble} Supreme Court has ruled that the Medical Bd which has physically examined should be given due weightage, value and credence.

3. It is being noticed that despite a settled legal posn such cases are still being contested on behalf of the UOI, which is infructuous and causes undue financial losses to both petitioner as well as the UOI.

4. All Command HQs are requested to instruct all Record Offices under their Comd to withdraw unconditionally from such cases, notwithstanding the stage they may have reached and such files be processed for sanction.

5. Record Offices will ensure that only such cases are withdrawn where :-

(a) Subsequent Appeal Medical Boards have not been held and initial findings of RMB/IMB have assessed disability/disabilities to be attributable-or aggravated / or connected with service.

(b) If subsequently, consequent to a Court Order or otherwise on indl's request any Appeal Medical Board which has physically examined the individual, has been held and they too have confirmed the alteration by MAP(PCDA(P)) as NANA or any other assessment which disallows disability pension to an indl, such cases will not be withdrawn.

6. All Record Offices are directed to unconditionally withdraw from all such cases which fulfil the criteria as mentioned in para 5 above."

8. Thus it is amply clear that PCDA (P) had no authority to reduce the disability pension of the applicant as 'NIL' overturning the assessment of the Re-survey Medical Board held on 23.05.1987 and that too without examining the applicant. It is patently clear that the action by PCDA (P) was illegal and therefore, the impugned order passed by the PCDA (P) is liable to be set aside and accordingly same is set aside.

9. This further leads to determination of question as to whether the applicant is entitled to continue to receive disability pension including the benefit of rounding off the disability element of pension. The Hon'ble Apex Court in ***UOI & Ors vs. Ram Avatar, Civil Appeal No. 418 of 2012*** held that even an individual who retired on attaining the age of superannuation, if found to be suffering from some disability which is attributable to or aggravated by military service, is entitled to the benefit of rounding off disability pension. That being position, the applicant who has been discharged from service on completion of his term of engagement is also entitled to the benefit of broadbanding disability element of pension.

10. In view of the aforesaid discussion, we allow the OA directing the respondents to grant the disability element of pension to the applicant @ 20% with rounding off benefit thereof i.e. 20% to 50% with arrear for a period of 03 years preceeding the date of filing of the earlier OA -76 of 2016 on 28.12.2016. The arrear would carry interest @ 9% per annum from the said date till the date of payment.

11. The OA is accordingly allowed.

12. No costs.

13. Mr. C Baruah, learned CGSC appearing for the respondents has made an oral prayer for grant of leave to appeal to the Hon'ble Supreme Court under Section 31 of the AFT Act, 2007. Since the order does not involve any question of law having general public importance, the prayer for leave to appeal to the Hon'ble Supreme Court stands rejected.

MEMBER (A)

MEMBER (J)

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